



REQUEST FOR PROPOSAL AAA0033
PURCHASING OFFICE
CITY OF AUSTIN

ADMS –SCADA SOFTWARE PURCHASE, IMPLEMENTATION, MAINTENANCE AND SUPPORT

RFP AAA0033

ADDENDUM No. 4

DATE: January 31, 2012

The following items are hereby incorporated into the solicitation package:

1. The internet address (see below) offered on the AAA0033 proposal offer / cover sheet for the incorporated City's 0100 – Definitions, 0200 Instructions and 0300 Standard Purchase Terms and Conditions, now directs you to the City of Austin, Austin Finance Online web page. For your convenience I have attached the 0100, 0200 and 0300 documents. If you care to review the documents via the webpage, after you have clicked on the link it directs you to Austin Finance Online web page, once there click on the Purchasing Service tab (middle of page) and you are directed to Standard Solicitation Documents for Purchasing. These documents are incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text.

0100, 0200, 0300	See http://www.ci.austin.tx.us/purchase/standard.htm *
0400	SUPPLEMENTAL PURCHASE PROVISIONS
0500	SCOPE OF WORK
0600	BID SHEET, PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS

2. Additional Proposal Questions and Answers

- a) **Section 3.1, Exhibit 3-1. Please clarify distinction between 'Event' number of concurrent users and 'Day' number of concurrent users.**

Concurrent Day Users - Refers to the typical number of concurrent users during a normal business day (8-5; Monday-Friday)

Concurrent Event Users – Refers to the typical number of concurrent users during a storm or major system disruption.

- b) **Section 4, Requirement R[15]. Please clarify detailed functionality for this requirement. What is the required behavior for the ADMS-SCADA to 'support CIM'?**

2.2.5.1 Database Construction and Maintenance

R[12.R] Initiate the CIM import/export process for exchanging power system modeling information with other computer systems.

4. User Interface

R[12]The ADMS-SCADA shall have the ability to export results into Excel spreadsheets and XML-CIM files.

6.1.1 Data Acquisition Protocols

R[2] The vendor will be able to support industry standard protocols:

R[2.A] IEC 61970 and IEC 61968: Providing a Common Information Model (CIM), necessary for exchanges of data between devices and networks, primarily in the transmission (IEC 61970) and distribution (IEC 61968) domains.

13. ADMS-SCADA Functional Requirements

R[8] This model will be based on the Common Information Model (CIM), with extensions provided by the vendor to address elements not covered by the CIM.

13.6 Integration Architecture Approach

R[1] In order to implement the ADMS-SCADA and support the integration needs of AE, the Vendor shall use a standards-based, CIM-compliant Enterprise Integration Bus (EIB) using a message bus concept or similar data-transfer mechanism.

14. Operator Training Simulator

R[6]OTS shall have the ability to interface with the ADMS-SCADA and PI using CIM.

14.3 Scenario Builder

R[4] OTS shall have the ability to import and export CIM files.

- c) **Section 11.1.1, Requirement R[1.B].** In addition to procuring required hardware, please confirm if AE will also cover shipping costs for sending hardware to/from Vendor facilities for FAT testing.
 Austin Energy will not cover shipping costs for sending hardware to/from Vendor facilities for FAT testing. Any additional shipping for hardware will be the responsibility of the Vendor.

Upon acknowledgement of the successful completion of FAT, the vendor is responsible for the costs to ship the hardware to AE's site for SAT.

- d) **Section 11.1.1, Requirement R[1.H].** Could AE please provide a sample extract of Milsoft EQDB data files?

Below is a sample extract of AE's electrical characteristics that will be provided to the short listed vendors. This sample is for an underground 1000 MCM copper conductor.

Equipment Identifier	1000 CU
Cable Type	0
Carrying Capacity	729
Phase Conductor Resistance	0.07128
Geometric Mean Radius	0.03705
Concentric Neutral Resist	0.208159
# of Individual Strands in Neutral	33
OD of Cable Insulation	0.13
OD of Cable Including Neutral	0.168333
Dielectric Constant of Insulation under Neutral	2.9
Diameter Under Neutral	0.138333
kV	0
Type Neutral	0
GMR (neutral)	0.0317574
Diameter of Conductor	0.0883333
Distance to CN	0.0382917
Named Equipment Category	User Defined

- e) **Section 12.11, Requirement R[9].** Please provide high level description of MSSP software and data interface requirements

AE has no immediate plan to implement an interface with any MSSP initially. If and when such a service is implemented, the specific data interface requirements are expected to be vendor specific and could range from typical system log exports to SNMP traps and/or a custom API.

- f) **Section 13.3.1.1, Requirement R[1.K]. Please provide high level description of third party system hosting distribution circuit ratings, including typical frequency of update of this data.**

Section Referenced:

ADMS-SCADA Functional Requirements

13.3.1.1 Required Characteristics

R[1] The DPF shall include the following characteristics:

R[1.K] The DPF shall interface with a third-party relational database to obtain distribution circuit ratings.

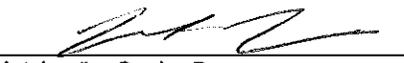
The circuit ratings interface will be an ODBC connection to a database updated by AE engineers or a future third party system. The typical frequency will be on a seasonal basis, but the system should accommodate updates for use on the next DPF study interval.

Please note: Additional ADMS-SCADA limit/ratings requirements outside the interface mentioned above are stated in 0500 Section 6 – Data Acquisition, Processing, and Control.

- g) **Section 13.5, Requirement R[2.N]. Please clarify required behavior of ADMS-SCADA related to exchange of data with TOA application.**

The ADMS-SCADA will need to exchange data with the TOA (Transmission Outage Application) via XML format. At a minimum the exchange will include sending/receiving switching orders to/from the TOA.

3. All other terms and conditions remain the same.

Approved by: 
Art Acuña, Senior Buyer

Receipt Acknowledged By:

Offeror's Name Authorized Signature Date

Return two (2) copies to the Purchasing Office, City of Austin, Texas prior to submittal or with your sealed bid. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.

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Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** - a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted.
11. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
12. **City** - the City of Austin, a Texas home-rule municipal corporation.
13. **Compliance Plan** - is defined in chapter 2-9 of the City Code.
14. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
15. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - A. any exceptions to the Offer accepted in writing by the City
 - B. the Supplemental Purchase Terms and Conditions

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- C. the Standard Purchase Terms and Conditions
 - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
16. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
 17. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
 18. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
 19. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
 20. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
 21. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
 22. **Goods** - supplies, materials, or equipment.
 23. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
 24. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
 25. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
 26. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
 27. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.
 28. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
 29. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
 30. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
 31. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.

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32. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
33. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
34. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
35. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
36. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
37. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
38. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
39. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
40. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
41. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.
42. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
43. **Request for Information (RFI)** - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
44. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
45. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.

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46. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
47. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
48. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
49. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
50. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
51. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
52. **Responsive** - meeting all the requirements of a Solicitation.
53. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
54. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
55. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
56. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
57. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
58. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.

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1. **VENDOR REGISTRATION**

All Vendors, Contractors, Subcontractors, Consultants, and Subconsultants desiring to sell to the City must be registered to do business with the City prior to submitting an Offer to a City solicitation. Prime Contractors/Consultants are responsible for ensuring that their Subcontractors/Subconsultants are registered. Registration can be done through the City's on-line vendor registration system. Log onto <https://www.cityofaustin.org/purchase> and follow the directions.

2. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Offerors shall sign and return with their Offer, the Non-Discrimination Certification contained in the Solicitation.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

3. **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM**

All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C, and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts. Goals for MBE/WBE participation are stated in each Solicitation and differ from contract to contract based on the type of contract, the availability of MBEs/WBEs to perform the functions of the contract, and other factors. Information on achieving the goals or documenting good faith efforts to achieve the goals are contained in the MBE/WBE Program Package contained in Section 0900 of the Solicitation. When goals are established, Offerors are required to complete and return the MBE/WBE Compliance Plan with their Offer. If no goals are established, Offerors are required to submit the No Goals Utilization Plan. If a Compliance Plan or No Goals Utilization Plan is not submitted prior to the date and time set forth in the Solicitation, the Offer will not be accepted for consideration.

4. **SOLICITATION**

- A. **Review of Documents:** Offerors are expected to examine all documents that make up the Solicitation. Offerors shall promptly notify the City of any omission, ambiguity, inconsistency or error that they may discover upon examination of the Solicitation. Offerors must use a complete Solicitation to prepare Offers. The City assumes no responsibility for any errors or misrepresentations that result from the use of incomplete Solicitations.
- B. **Location of Documents:** Solicitations are issued by the Purchasing Office. The location and phone number for the Purchasing Office are specified in the advertisement and in the Solicitation.

5. **WRITTEN EXPLANATIONS OR CLARIFICATIONS**

Any material information given to one Offeror concerning a Solicitation will be furnished as an Addendum to all Offerors who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding. Requests for explanations, clarifications or

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interpretations may be faxed to the City at (512) 974-2388. The fax must clearly identify the buyer's name and solicitation number.

6. PRE-BID / PROPOSAL / RESPONSE CONFERENCE

If a Pre-Bid/Proposal/Response conference is mandatory, the time, place and mandatory nature of the conference will be specified on the cover page of the Solicitation. If a Pre-Bid/Proposal/Response Conference is mandatory and is not attended by an Offeror, their Offer will be rejected.

7. PREPARATION OF OFFERS

- A. **Alternate Offers:** Alternate Offers will be rejected unless the Solicitation authorizes the submission of Alternates.
- B. **Bid Preparation Costs:** All costs associated with preparing a Bid in response to a Solicitation shall be borne by the Bidder.
- C. **Bid / Proposal / Response Guaranty or Bond:** When required by the Solicitation, an Offer must be accompanied by a Bid/Proposal/Response Guaranty or a Bid/Proposal/Response Bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.
- D. **Brand Name or Equal:** If the Solicitation indicates brand name or "equal" products are acceptable, the Offeror may propose an "equal" product but must be prepared to demonstrate those features that render it equal. Final determination of a product as an "equal" remains with the City.
- E. **Delivery Time:** Delivery time, if stated as a number of days, will be based on calendar days. Time is of the essence in any City purchase. If the indicated date cannot be met or the date is not indicated, the Offeror shall state its best delivery time.
- F. **Exceptions:** Exceptions that are taken to any portion of the Solicitation may jeopardize acceptance of the Offer.
- G. **Free on Board (FOB) Point:** The Offeror should quote its lowest and best price, with the goods delivered to the place specified, at the Offeror's expense and risk, and there tender delivery to the City.
- H. **Payment:** Payment terms shall be net 30 days.
- I. **Prices:** Offers shall be firm unless otherwise specified. Pricing shall be entered on the Bid/Quote Sheet (if applicable) in ink. Totals shall be entered in the "Total Price" column of the Bid/Quote Sheet. In the event of a discrepancy between unit price and extended price, the unit price shall govern.
- J. **Proposal Preparation Costs:** All costs directly or indirectly related to preparation of a Response to an RFP or any oral presentation required to supplement and/or clarify a Proposal which may be required by the City shall be the sole responsibility of the Proposer.
- K. **Proprietary Information:**
 - i. All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt.
 - ii. If an Offeror does not desire proprietary information in the Offer to be disclosed, each

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page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.

- iii. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- L. **Signature:** The Offeror must sign each document in the Solicitation requiring a signature. Any change made to the Offer must be initialed by the Offeror.
- M. **Taxes:** Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Offers should not include exempted taxes. The successful Offeror should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.
- N. **Anti-Lobbying and Procurement.** Article 6, Chapter 2-7, City Code, prohibits lobbying activities or representations by Offerors between the date that the Solicitation is issued and the date a Contract is executed.
 - i. Definitions
 - (1) Authorized Contact Person - the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
 - (2) No-Contact Period - the period of time from the date of issuance of the Solicitation until a Contract is executed. If the City withdraws the Solicitation or rejects all Offers with the stated intention to reissue the same or similar Solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
 - (3) Offer - a complete signed response to a Solicitation including, but not limited to, a Bid, a Proposal, a Qualifications Statement, or a Quote.
 - (4) Offeror - a person, firm, or entity that submits an Offer in response to a City Solicitation. Includes Bidders, Proposers, Quoters, Contractors and Consultant.
 - (5) Representation - a communication related to a response to a council member, official, employee, or agent of the City which provides information about an Offer, advances the interests of the Offeror, discredits the Offer of any other Offeror, encourages the City to withdraw the Solicitation, encourages the City to reject all of the Offers, or conveys a complaint about a particular Solicitation.
 - ii. Restrictions on Contacts:
 - (1) During a no-contact period, an Offeror shall communicate only through the authorized contact person.
 - (2) If, during the no-contact period, an Offeror makes a representation with a member of the City Council, a member of a City board, or any other official, employee, or agent of the City, other than to the authorized contact person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the paragraph below. This prohibition also applies to a vendor that communicates and then becomes an Offeror.

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- (3) The prohibition of representation during the no-contact period applies to a representation initiated by an Offeror, and to a representation made in response to a representation initiated by a member of the City Council, member of a City board, or any other official, employee, or agent of the City other than the Authorized Contact Person.
 - (4) If the City withdraws a Solicitation or rejects all Offers with a stated intention to reissue the same or similar Solicitation for the same or similar project, the no-contact period shall expire after the sixtieth day after the date the Solicitation is withdrawn or all Offers are rejected if the Solicitation has not been reissued during the 60-day period.
 - (5) This section does not apply to a representation:
 - (i) made at the pre-Bid/Proposal/Response conference or any other meeting convened by the Authorized Contact Person;
 - (ii) required by Financial Services Department protest procedures for Offerors;
 - (iii) made at a Financial Services Department protest hearing;
 - (iv) provided to the Small & Minority Business Resources Department in order to achieve compliance with Chapter 2-9 of the MBE/WBE Procurement Program;
 - (iv) made to the City Risk Management coordinator about insurance requirements for an Offer; and
 - (vi) made in public at a meeting held under the Texas Open Meetings Act.
- iii. Allowed Representation
- (1) If an Offeror desires to make a representation to a City official, employee, or agent during the no-contact period, the Offeror shall submit the representation in writing only to the authorized contact person. The contact person will then distribute the written representation in accordance with the terms of the Solicitation. An Offeror cannot amend or add information to an Offer after the Due Date
 - (2) If an Offeror wishes to make a complaint about a particular Solicitation to a City Council member or City board member, the Offeror should submit the written complaint to the authorized contact person. The contact person will then distribute the complaint to members of the City Council or members of the City board, to the Purchasing Officer and to all Offerors on the Solicitation.
 - (3) If an Offeror submits a written inquiry regarding a Solicitation, the authorized contact person will provide a written answer and distribute both the inquiry and answer to all Offerors on the Solicitation.
 - (4) If an Offeror does not receive a response from the authorized contact person, the Offeror may contact the Purchasing Officer.
- iv. Contract Voidable. If a contract is awarded to an Offeror who has violated these Anti-Lobbying & Procurement provisions, the contract is voidable by the City.
- v. Debarment. If an Offeror violates these provisions more than once in a three (3) year period, the Purchasing Officer shall debar the Offeror from the sale of goods or services to the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.

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8. SUBMISSION OF OFFERS

Offerors are required to submit an executed original and copies of the Offer as specified on the Cover page of the Solicitation.

A. **Documents required with Offer:** The following documents must be submitted with each Offer, as applicable, prior to the Due Date (**SEE SECTIONS 0400, 0500 and 0600 IN THE SOLICITATION FOR ADDITIONAL REQUIRED INFORMATION**):

- i. Cover Page, Offer Sheet;
- ii. Section 0600, Bid/Quote Sheet or Offer, as applicable
- iii. Section 0700, Reference Sheet, as applicable
- iv. Sections 0800– 0835, Certifications and Affidavits (return all applicable Sections);
- v. Section 0900, MBE/WBE Procurement Program Package or No Goals Utilization Plan
- vi. Bid/Proposal Guaranty; and
- vii. any other document included in the Solicitation requiring completion or execution by the Offeror;

All other pages in the Solicitation should be retained by the Offeror.

B. **Mailing:** Offers and Compliance Plans (when required by the Solicitation), must be returned in a sealed envelope or container marked on the outside with the:

**Offeror's name & address
Solicitation number
Due date and time.**

- i. If a MBE/WBE Compliance Plan is required, it may be submitted with the sealed Offer or in a separate sealed envelope. If the Compliance Plan is included with the Offer, the outside of the envelope must indicate that the Compliance Plan is included. If the Compliance Plan is submitted in a separate envelope, the outside of the envelope must identify the contents as the "Compliance Plan" and must also include the Offeror's name & address, the Solicitation number, and the Due Date and time. If a Compliance Plan is required but is not submitted prior to the time set forth in the Solicitation, the Offer will not be accepted for consideration.
- ii. When sending an Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin
Purchasing Office	Purchasing Office
P.O. Box 1088	Municipal Building
Austin, Texas 78767-8845	124 W. 8 th St., 3 rd Floor, Rm 310
	Austin, Texas 78701
	Phone: (512) 974-2500

Note: Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

- iii. Unless authorized in the Solicitation, telegraphic, facsimile, or electronic Offers will not be accepted.

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- C. **Addendum**: Receipt of an Addendum must be acknowledged by signing and returning the Addendum with the Offer or under separate cover prior to the Due Date. The Addendum must be returned in a sealed envelope marked on the outside with the Offeror's name, address, the Solicitation number, and the Due Date and time.
- D. **Late Offers**: Offers must be received in the Purchasing Office prior to the Due Date and time. All Offers received after the Due Date and time are considered late and will be returned to the Offeror unopened. The time stamp clock on the receptionist's desk in the Purchasing Office is the time of record and is verified daily with the local time service at (512) 476-7744. It is the sole responsibility of the Offeror to ensure timely delivery of the Offer. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Offeror.

9. **MODIFICATION OR WITHDRAWAL OF OFFERS**

- A. **Modification of Offers**: Offers may be modified in writing at any time prior to the Due Date.
- B. **Withdrawal of Offers**: Offers may be withdrawn in writing, telegraphically, or by facsimile (provided that the facsimile is signed by the Offeror) at any time prior to the Due Date. An Offeror may also withdraw an Offer in person, provided the withdrawal is made prior to the Due Date. A receipt of withdrawal must be signed by the Offeror. Withdrawn Offers may be resubmitted, with or without modifications, up to the Due Date.

10. **OPENING OF BIDS**

The Purchasing Office representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall then personally and publicly open all Bids timely received, reading each Bid aloud.

11. **OPENING OF PROPOSALS / QUALIFICATIONS STATEMENTS AND RELEASE OF INFORMATION**

Proposals/Qualifications Statements will be opened in a manner that avoids disclosure of the contents. At its sole discretion, the City may release to the public information that is contained in an opened Proposals/Qualifications Statement after City staff review, except as prescribed by State law, including Texas Government Code Chapter 552 and Local Government Code Chapter 252, provided that the City determines that the disclosure will not create a competitive disadvantage for the City.

12. **EVALUATION FACTORS AND AWARD FOR QUOTES AND BIDS**

- A. **Evaluation**: Offerors may furnish pricing for all or any portion of the Solicitation (unless otherwise specified). However, the City may evaluate and award the Contract for any item or group of items shown on the Solicitation, or any combination deemed most advantageous to the City. Offers that specify an "all or none" award may be considered if a single award is advantageous. An Offer containing prices significantly lower than all other Offeror's prices for an item will present a rebuttable presumption of irresponsibility.
- B. **Award**: Request for Quotations and Invitations for Bids will be awarded to the Lowest Responsible Offeror. Invitation for Bids – Best Value will be awarded to the bidder who provides good or services at the best value for the City based on factors outlined in Section 0600. Request for Quotations - Sale and Invitation for Bids - Sale will be awarded to the Highest Responsible Offeror.
- C. **Acceptance of Quote/Bid**: Acceptance of a Quote/Bid for an open market purchase or supply or service Master Agreement will be by a Purchase Order or a Contract as appropriate.

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Subsequent Delivery Orders may be issued as appropriate. The contents of a Quote/Bid shall become a part of the Purchase Order/Contract. Under no circumstances will the City be responsible for Goods or Services provided without an acceptance signed by or authorized by an Authorized City Representative.

13. EVALUATION FACTORS AND AWARD FOR PROPOSALS AND RESPONSES

Competitive Selection: This procurement will comply with applicable City of Austin Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Section 0600 of the Solicitation shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful Proposer. Award of a contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

14. RESERVATIONS

The City expressly reserves the right to:

- A. specify approximate quantities in the Solicitation;
- B. extend the Solicitation closing date and time;
- C. waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable Goods or Services;
- D. waive any minor informality in any Offer or Solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offeror);
- E. add additional terms or modify existing terms in the Solicitation;
- F. reject an Offer containing exceptions, additions, qualifications or conditions not called for in the solicitation.
- G. reject an Offer received from an Offeror who is currently debarred or suspended by the City or State;
- H. reject an Offer received from an Offeror who is currently debarred or suspended by the Federal Government (Applicable if project receives Federal funding);
- I. reject an Offer that contains fraudulent information;
- J. reject an Offer that has material omissions;
- K. reject or cancel any or all Offers;
- L. reissue a Solicitation;
- M. procure any item by other means;
- N. consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or
- O. reject an Offer because of unbalanced unit prices;

15. NEGOTIATIONS OF PROPOSALS

The City reserves the right to negotiate all elements which comprise the Offeror's Proposal to ensure that the best possible consideration be afforded to all concerned.

16. CONTRACT INCORPORATION

Offeror should be aware that the contents of the successful Offer will become a part of the subsequent contractual documents. Failure of the successful Offeror to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.

17. OPPORTUNITY TO PROTEST

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The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.

- A. **Prior to Offer Due Date:** If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Due Date for receipt of Offers, you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Offer Due Date.
- B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:
- i. You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
 - ii. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated above.
 - iii. You must submit your protest in writing and must include the following information:
 - (1) your name, address, telephone, and fax number;
 - (2) the solicitation number and the CIP number, if applicable;
 - (3) a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
 - iv. Your protest must be concise and presented logically and factually to help with the City's review.
 - v. When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
 - vi. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
 - vii. A decision will usually be made within fifteen (15) calendar days after the hearing.
 - viii. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
 - ix. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
 - (1) the City urgently requires the supplies or services to be purchased, or
 - (2) failure to make an award promptly will unduly delay delivery or performance.

In those instances, the City will notify you and make every effort to resolve your protest before the award.

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18. POST OFFER DOCUMENTS REQUIRED FROM SUCCESSFUL OFFEROR

- A. **Letters of Intent:** When a MBE/WBE Compliance Plan is required, the successful Offeror must submit to the Purchasing Officer the Letters of Intent to subcontract required by the Compliance Plan within three (3) business days after notification. Failure to submit the required letters will be grounds for rejection of the Offer.

- B. **Certificates of Insurance:** When insurance is required, the Offeror must provide proof of coverage prior to execution of a Contract. The Offeror shall provide Certificates of Insurance in the amounts and for the coverages required to the Purchasing Office within 14 calendar days after written request from the City (See also "Insurance" in Section 0400, Supplement Purchase Provisions, of the Solicitation).

- C. **Bonds:** When Bonds are required, the Offeror must provide the bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.

- D. **Chapter 176 Conflict of Interest Disclosure:** In accordance with Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.ci.austin.tx.us/cityclerk/coi.htm>

There are statutory penalties for failure to comply with Chapter 176.

- E. **Employment Non-Discrimination Policy:** The Offeror must submit to the Purchasing Office a copy of the Offeror's employment non-discrimination policy prior to execution of a Contract. The Offeror shall provide the policy within 14 calendar days after written request from the City. Failure to submit the required policy will be grounds for rejection of the Offer.

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By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which

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could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and

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Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
19. **WARRANTY-PRICE:**
- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
 - B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
 - C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and

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regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior

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to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
 - A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

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adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:**

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. **General Requirements.**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

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or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

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- A. **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City

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shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION:**
 - A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

55. EQUAL OPPORTUNITY

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

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- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".